

MANDATE

S.D.N.Y.-N.Y.C.
13-cv-7434
Cedarbaum, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of April, two thousand fourteen.

Present:

Guido Calabresi,
José A. Cabranes,*

Circuit Judges.

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: June 17, 2014**

Rene Tellier,

Petitioner,

v.

13-4378

United States of America,

Respondent.

Petitioner requests an order authorizing the United States District Court for the Southern District of New York to consider a successive 28 U.S.C. § 2255 motion. He also moves to reinstate this proceeding. Upon due consideration, it is hereby ORDERED that the motion to reinstate is GRANTED, but the motion for leave to file a successive § 2255 motion is DENIED.

Petitioner has not satisfied the criteria set forth in 28 U.S.C. § 2255(h). The plea offers cited in support of Petitioner's first claim are not "newly discovered" evidence within the meaning of § 2255(h), as they were made approximately twenty years ago, and Petitioner offers no explanation as to why he could not have learned of them prior to filing his first § 2255 motion. All of the facts

*The Honorable Debra A. Livingston, originally a member of the panel sitting on April 7, 2014, recused herself from consideration of this matter. The remaining members of this panel, who are in agreement, have decided this case pursuant to 2d Cir. R § 0.14(b).

cited in support of Petitioner's second claim appear to have been known to Petitioner since at least the time of trial. In any event, none of the "new evidence" cited by Petitioner "establish[es] by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the offense," 28 U.S.C. § 2255(h)(1), if they had been known to Petitioner or the jury at the time of trial.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

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United States Court of Appeals, Second Circuit

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Catherine O'Hagan Wolfe